IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 1007 OF 2003

IN

SUMMARY SUIT NO. 2474 OF 2003

Ashok Kumar Bhanwarlal Nahata .....**Plffs.**
vs.
Nitin Kumar Samarthmal Jain .....**Defnds.**

Mr. Jagdish T. Nagar for the plaintiffs.

Mr. U.S Rao for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 17TH AUGUST, 2005.

P.C. :.

1. The present suit is filed on goods sold and delivered under the contracts under various invoices and delivery challans which are annexed as Ex.A to Ex.A.4 and Ex.B to Ex.B-4 resp. The amount covered under the said contract was not being paid and therefore the plaintiff issued a notice and

inreply to the said notice the defendant has contended that the goods were defective. Learned counsel appearing for the plaintiff contends that the present suit is not maintainable as a summary suit under Order 37 of the High Court Rules. He relies upon the judgment of the Andhra Pradesh High Court in the case of M/s. Pragathi Bearings vs. M/s. Laxmi Durga Granites Ltd reported in AIR 2001 A.P. 56. In view of the judgment of this court in the case of Siyaram Silk Mills Ltd vs. Tessiva S.P.A. reported in 2004(6) Bom. C.R.67 that the suit is maintainable as a summary suit on the goods sold and delivered if the contract is evidenced by invoices and delivery challans. I am not inclined to accept the contention as raised by the learned counsel that the suit is not maintainable. He has further contended that the mandatory requirements of necessary averments as provided under o.37 is not complied with.

2. I do not find any substance in the said defence as in my view para-12 of the plaint complies with the mandatory requirements under the

provisions of O.37.

3. The next contention raised that the goods are defective is also without any merits because for the first time the said defence was raised subsequent to the issuance of demand notice and admittedly the goods are not returned by the defendants. In view of the aforesaid I do not find any merits raised by the defendants.

4. However, with a view to give opportunity to the defendants to defend the suit. I directed the defendants to deposit in this court a sum of Rs.65,000/- within a period of four weeks from today. On failure to deposit the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior Master in fixed deposit of any nationalised bank initally for a period of three years and renew the same from time to time till further orders from this court.

5. If the amount is paid as aforestated, then suit to be transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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